

send to Wiley the submission of documents it proposes (based only on the prior day's identifications and exchanges of documents) and its comments and explanations. Wiley shall add its comments and explanations and additional documents (also based only on the prior day's exchanges), and submit the entire package to me by 3:00 p.m., Thursday, August 5, 2010.

- b. Wiley argues that an agreement was not made because, among other reasons, Hiser refused to agree to a condition that Wiley proposed, that Hiser's counsel promise not to represent any other client in a claim or suit against Wiley. Hiser contends that such a promise would violate the rules of professional responsibility. The court requires briefing on the following issues: whether such a condition can lawfully be demanded or, if demanded, promised, and whether such a condition may be ignored in deciding if the parties had a meeting of the minds. The parties shall submit their briefs simultaneously, at noon, Friday, August 6, 2010.

- 2. Although Wiley's insistence on going forward with the "30(b)(6)" depositions according to schedule was unreasonable in light of the dispute regarding an alleged agreement, Hiser's motion for sanctions and/or attorneys' fees and costs is denied. Witnesses – even "30(b)(6)" witnesses – are not required to conduct research on a lengthy list of topics, or bring documents with them to the examination room. Relevant documents should have been produced timely, by the parties, in response to notice, and at a scheduled time and place, before depositions were scheduled to begin.

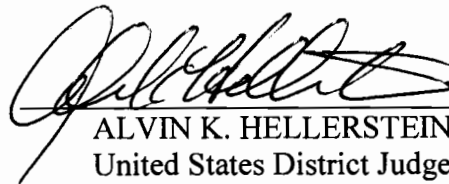
Hiser should reconsider the taking of these depositions in light of the purpose served by interrogatories.

3. The conduct of counsel for both parties has been unprofessional. Name-calling shall not again occur. Counsel owe each other courtesy and respect. Future submissions that stray from this standard are likely to be cause for sanctions.
4. The lawyers for both sides have been conducting this case disproportionately to the amounts and principles that are involved. Zealous representation does not require irrelevant demands for discovery or untimely and unresponsive answers and document productions. Repetitions of such conduct are likely also to give rise to sanctions.

SO ORDERED.

Dated:

July 30, 2010
New York, New York


ALVIN K. HELLERSTEIN
United States District Judge